

**EXHIBIT 15
Part 7 of 7**

1 CALIFORNIA BOARD OF PRISON TERMS

2 D E C I S I O N

3 DEPUTY COMMISSIONER GARNER-EASTER: We're
4 back on record.

5 PRESIDING COMMISSIONER MUNOZ: All right.

6 Thank you. It's 10 minutes after 10 a.m., and the
7 parole consideration hearing for Inmate Hernandez
8 has resumed. And Mr. Spowart, there was something
9 you wanted to say, sir.

10 ATTORNEY SPOWART: Yes. In my closing
11 argument, I admitted to one point. There is no
12 person here today from the county of commitment,
13 and there is no letter from either the DA or the
14 sheriff or the police. And that would lead me to
15 believe that they are not in -- they are not
16 against my client receiving a date today.

17 PRESIDING COMMISSIONER MUNOZ: All right.
18 Understand that I did mention during the course of
19 the hearing that we had no letters of opposition
20 from any corner, and we certainly considered that
21 during our deliberations. And Mr. Hernandez, this
22 Panel reviewed all information received from the
23 public and relied on the following circumstances in
24 concluding that you're not suitable for parole, and
25 that you would pose an unreasonable risk of danger
26 to society if released from prison at this time.

1 Many factors were considered. First and foremost
2 was the commitment offense and the nature of that
3 offense. This offense was carried out in a cruel
4 manner with a callous disregard for human
5 suffering. And unfortunately one individual, the
6 victim in this case, Mr. Bustos, was killed as a
7 result of your actions. And there were others that
8 were exposed to great risk. Other people were
9 present when you killed Mr. Bustos. You shot him
10 with a shotgun, and they were certainly exposed to
11 great risk. These conclusions are drawn from the
12 Statement of Facts wherein the prisoner, while
13 immersed in a drug lifestyle, he was addicted to
14 heroin at the time of the commitment offense, went
15 to the home of his local supplier, someone he had
16 done business with in the past, to buy some heroin.
17 He claims he armed himself with a shotgun because
18 he had had run-ins with this particular individual,
19 the victim in this case, in the past, or he had
20 been shortchanged either in money or the quality or
21 the amount of the heroin. Apparently he gave
22 someone in the residence some money for some heroin
23 and grew tired of waiting. Forced entry into the
24 apartment. A confrontation followed and -- between
25 the inmate and the victim. The victim had a
26 handgun, apparently, in his waistband. And during
27 HECTOR HERNANDEZ D-33689 DECISION PAGE 2 2/20/03

1 the confrontation -- during the argument, the
2 inmate grew fearful that the victim would shoot
3 him, and he fired his shotgun at the victim from
4 about seven to eight feet, resulting in the demise
5 of a human being. The inmate fled the location
6 without rendering aid to the victim and did not
7 turn himself in. He was arrested a few days later.
8 The -- As he fled, the victim took the weapon that
9 the -- Excuse me. The inmate took the weapon that
10 the victim had on his waistband. And at the time
11 of the commitment offense, as I indicated, he was
12 going through an unstable period in his life. He
13 was addicted to heroin. His prior criminality
14 includes a number of arrests, primarily property
15 arrest or some violence related arrests. I think
16 only one conviction. You went to CYA for an armed
17 robbery. There -- He has -- The record also
18 reflects some drug-related arrests, a couple of
19 Safety Code violations, and he's failed to profit
20 from society's previous attempts to correct his
21 criminality, which includes juvenile probation,
22 some time in juvenile hall, a CYA commitment, adult
23 probation, some county jail, adult probation, and a
24 prior -- a federal prison term. During this period
25 of incarceration, this inmate has received eleven
26 128(a)s and seven 115s. There were no disciplinary
27 HECTOR HERNANDEZ D-33689 DECISION PAGE 3 2/20/03

1 citations since his last parole consideration
2 hearing. As a matter of fact, there are none since
3 1999. The most recent psychological evaluation is
4 a good evaluation. And that's the 1999 evaluation
5 by Dr. Reed. It's good and positive. We looked at
6 his parole plans. He does have letters of support
7 and commitment from his parents offering their
8 residence and any support they might be able to
9 give him to complete successful parole. He also
10 has the letter from his defense counsel who is also
11 willing to assist him. There is no firm job offer
12 at this point. And the plans -- And the residency
13 plans do comply with the general or the basic rule
14 to reside in the county of residency at the time of
15 the commitment offense. This Panel makes the
16 following findings, that this inmate needs to
17 continue to participate in self-help programming,
18 any and all that becomes available. He also needs
19 to take part in therapy if any becomes available.
20 And we realize that there's not much available out
21 there as far as therapy is concerned. But if
22 anything should come up, we certainly urge this
23 inmate to take part in that therapy. This Panel
24 feels that the inmate needs to delve deeper into
25 the causation factors involved in the commitment
26 offense. In speaking with him today, we realize
27

1 the inmate is nervous. All inmates are nervous
2 when they come to these hearings. And we -- the --
3 came across in our conversations with this inmate
4 was that he somehow believes that he was acting to
5 protect himself. And we don't think that's the
6 case. The jury didn't think that was the case. He
7 was convicted of murder in the second degree. We
8 do appreciate the gains that he has made, and we
9 certainly hope he continues on that path. He
10 should be commended for his work in AA, his
11 participation in AA and NA, his self-help
12 programming. He's taken part in a 13-week Impact
13 Program in the past. He's taken part with Peer
14 Education. And he's taken -- He took part in the
15 course on communicative disease. However, these
16 positive aspects of his behavior do not outweigh
17 the factors of unsuitability. I should also note
18 that he has completed a vocation, mill and cabinet,
19 and is currently enrolled in the print shop course.
20 This is another one-year denial, Mr. Hernandez.
21 And we recommend that you keep doing what you're
22 doing, sir, remain disciplinary-free. We realize
23 that you're disappointed in the outcome of this
24 hearing. Don't let your disappointment or
25 frustration turn to bitterness. Don't do anything
26 rash or stupid. Stay with the course you're on.

EXHIBIT "20"

BOARD OF PRISON TERMS

LIFE PRISONER HEARING DECISION FACE SHEET

PAROLE GRANTED - (YES)

CDC: Do not release prisoner before
Governor's review

Records Use Only

Parole Release Date

YR MO DAY

PAROLE DENIED - (NO) — 1 yr

Attach Prison Calculation Sheet

AGREED UNSUITABLE (Attach 1001A Form) FOR: _____ YEAR(S)

HEARING POSTPONED/REASON: _____

PANEL RECOMMENDATIONS AND REQUESTS

The Board Recommends:

- No more 115's or 128A's
- Stay discipline free
- Work to reduce custody level
- Learn a trade*
- Get self-help*
- Get therapy*

- Earn positive chronos
- Get a GED*

Recommend transfer to _____

Other _____

*These programs are recommended if they are offered at your prison and you are eligible/able to participate.

Penal Code 3042 Notices Sent Date: APRIL 28, 2004

Commitment Offense(s) 187/12022.5

MURDER 2ND W/USE OF FIRE ARM

Code(s)

Crime(s)

3362753

1

Case #(s)

Count #(s)

Date Inmate Came to CDC
7/7/86

Date Life Term Began
12/22/86

Minimum Eligible Parole Date
8/3/96

Initial Hearing

Subsequent (Hearing No.) 5

Date of Last Hearing _____

CDC Representative

Address

Attorney for Prisoner

County FRESNO

D.A. Representative

This form and the Board's decision at the end of the hearing is only proposed and NOT FINAL. It will not become final until it is reviewed.

Chair

Susan Fisher

Date 7 / /

Panel Member

Date 7 / /

Panel Member

Date 7 / 04

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

SETTING A LIFE PRISONER TERM - PAROLE DENIED

11. NOTE TO CDC STAFF: RECOMMENDATIONS AND REQUESTS

3. the panel's belief that the prisoner's current mental health is an important issue. In the new full evaluation, the panel requests that the clinician specifically address the following:

a. the prisoner's violence potential in the free community;

b. the significance of alcohol/drugs as it relates to the commitment offense and an estimate of the prisoner's ability to refrain from use/abuse of same when released;

c. the prisoner's psycho-sexual problems;

d. the extent to which the prisoner has explored the commitment offense and come to terms with the underlying causes;
Sinsight and victim impact

e. the need for further therapy programs while incarcerated.

f. other: _____

4. the panel's belief that the prisoner has deteriorated psychologically and there appears to be a need for treatment. The panel bases this conclusion upon

B. (Other requests to CDC staff): _____

*J. Fisher BPT
7/1/04*

Hernandez

D 33689

1 CALIFORNIA BOARD OF PRISON TERMS

2 D E C I S I O N

3 DEPUTY COMMISSIONER LOPEZ: Okay, we're back
4 on record.

5 PRESIDING COMMISSIONER FISHER: All right.

6 I want to note for the record that everyone who
7 was previously in the room and identified
8 themselves, has returned to the room. And, Mr.
9 Hernandez, I'm going to read the decision into the
10 record. This is going to be a one-year denial,
11 but I want to tell you that we really struggled
12 over this, and we just thought that there were
13 some lose ends that needed to be addressed.

14 You're doing a really good job and I don't want
15 you to be discouraged by this. You have to
16 understand that if a Panel does a finding of
17 suitability that everything is going to be gone
18 over with a fine tooth comb and we feel that there
19 are some issues that you need to address over the
20 next year. In concluding that you're not suitable
21 for parole, we reviewed all of the information
22 received from the public and relied on the
23 following circumstances in deciding that we felt
24 that you would pose an unreasonable risk of danger
25 to society or a threat to public safety if
26 released from prison. And obviously the

1 commitment offense was one of the first things
2 that we looked at. This was a very callous
3 offense and the motive for this crime was very
4 trivial and was related to a drive-by. This was a
5 situation where you went to this man's home and
6 you went there armed. You stated previously that
7 you thought that he'd been pinching your buys when
8 you were buying heroin from him before. So, you
9 know, there's certainly an indication that you
10 went there with the gun because of that belief
11 that he'd been pinching your buys, and you said
12 that you believed that he had a gun, but all of
13 the witnesses said that there was only one shot.
14 So this man was shot in his own home with
15 apparently no provocation on his part, you were
16 not shot at according to witnesses. And then
17 following the crime you disposed of your weapon
18 and stated that you believed that he had shot
19 first, but you also disposed of the gun that was
20 owned by him so there was no way for the police or
21 anyone else to determine that his weapon had or
22 had not been shot. So the evidence was disposed
23 of and there was no way to really check your
24 story. During the commission of this crime, there
25 were several other people around who were exposed
26 to danger who could have been shot accidentally
27 HECTOR HERNANDEZ D-33689 DECISION PAGE 2 7/1/04

1 because of the fact that you were shooting at the
2 victim, Mr. Bustos. The inmate certainly has an
3 escalating pattern of criminal conduct. He has
4 quite a lengthy history beginning as a juvenile
5 back in 1970. He has failed to profit from
6 society's previous attempts to correct his
7 criminality and such attempts include Juvenile
8 Hall, wardship, juvenile probation, and even a
9 stay in federal prison. His unstable social
10 history includes the prior criminality that I
11 mentioned as well as heroin addiction. You have
12 programmed well though. You have done a good job
13 with your program. And apparently you have not
14 only taken advantage of the opportunities that
15 have been available to you, but you've also taken
16 the opportunity to help other people with their
17 programming, and I want to commend you for that.
18 We both feel that you've done a good job of using
19 the situation that you find yourself in to the
20 best of your ability. He has had 11 128
21 counseling chronos since his incarceration for
22 this commitment offense, the last one was in 2000.
23 There have been seven 115s and the last one was
24 back in 1999. There are some concerns with some
25 of the statements in the psychiatric evaluation.
26 Although parts of it are quite supportive, there
27 HECTOR HERNANDEZ D-33689 DECISION PAGE 3 7/1/04

1 are other parts that are open to question, and we
2 are going to be ordering a new psych report. The
3 first thing that we want to note and ask to have
4 the new psych report evaluate is that in this
5 psych report under current diagnostic impressions
6 under Axis II it notes Antisocial Personality
7 Disorder Improving. And under review of life
8 crime it says that the inmate demonstrated limited
9 empathy for the victim whom he related to as a
10 drug dealer and somewhat more empathy for the
11 victim's family, although it does state that he
12 appears to be penitent for his crimes. The
13 prisoner has parole plans. He has offers of
14 residence and support. However, he doesn't have
15 -- doesn't have really viable employment plans.
16 You certainly don't need to have a job in order to
17 get a parole date, but you do need to have
18 workable plans, and I'm going to suggest to you
19 that you look in the area of your residence that
20 you would parole out to, get hold of a phone book
21 for that area and write some letters to businesses
22 there where you might be able to send resumes and
23 potentially get an offer of a job fairly quickly
24 after being paroled. It also wouldn't hurt for
25 you to go ahead and have your friend look into
26 some of the residential programs that you talked
27 HECTOR HERNANDEZ D-33689 DECISION PAGE 4 7/1/04

1 about and get some letters back from them stating
2 what the program is and that it would be
3 acceptable to them to have you parole into one of
4 their programs. Then you need to get some solid
5 plans for supporting yourself. And I commend you
6 that you want to go out and do the peer support
7 and the peer counseling kinds of things, but I
8 have to tell you that it's going to be tough to
9 find those kinds of positions out there where you
10 can get paid and support yourself. So you need to
11 have day job, you need to have something in mind
12 that you can do to pay the bills in order to be
13 able to do the volunteer work that you want to do.

14 The Hearing Panel notes that in response to 3042
15 Notices, the District Attorney of Fresno County
16 indicated an opposition to a finding of
17 suitability at this time. And we do want to
18 commend you for the work that you've done here.

19 Once again you've done a good job with your
20 programming. You've completed graphic arts,
21 you've completed mill and cabinet. You got your
22 GED back in '92. You've been -- you were involved
23 in the Inmate Peer Education program back in '91,
24 and you've been disciplinary free since '99. Once
25 again, there are just some things that you need to
26 dot the I's and cross the T's on and you just need

1 to continue doing what you're doing as far as your
2 program goes. Currently the positive aspects do
3 not outweigh the factors of unsuitability. The
4 Panel recommends that you continue to upgrade
5 vocationally and educationally anyway you can just
6 because it's a good thing for you to do. Continue
7 to participate in self-help, certainly you know
8 that the NA program, the substance abuse programs,
9 those kinds of things are lifetime commitments.
10 And cooperate in the completion of a new psych
11 report. And that completes the reading of the
12 decision. Do you have any comments, Commissioner?

13 DEPUTY COMMISSIONER LOPEZ: No. I wish you
14 luck, sir.

15 PRESIDING COMMISSIONER FISHER: Good luck,
16 sir. That completes the hearing --

17 ATTORNEY TARDIFF: (Inaudible).

18 PRESIDING COMMISSIONER FISHER: Yes, I'm
19 sorry it's sitting right here. That completes the
20 hearing. It's approximately 9:20.

21 --oo--

22

23 PAROLE DENIED ONE YEAR

24 THIS DECISION WILL BE FINAL ON: OCT 29 2004

25 YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT
26 DATE, THE DECISION IS MODIFIED.

27 HECTOR HERNANDEZ D-33689 DECISION PAGE 6 7/1/04

CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, WENDY THOMAS, a duly designated transcriber, CAPITOL ELECTRONIC REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 through 58, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY at SOLEDAD, CALIFORNIA in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of HECTOR HERNANDEZ, CDC No. D-33689, on JULY 1, 2004 and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape(s) to the best of my ability.

I hereby certify that I am a disinterested party in the above-captioned matter and have no interest in the outcome of the hearing.

Dated July 20, 2004 at Sacramento County, California.

Wendy Thomas
Wendy Thomas
Transcriber
CAPITOL ELECTRONIC REPORTING

EXHIBIT "21"

**BOARD OF PAROLE HEARINGS**
DECISION PROCESSING AND SCHEDULING UNIT

P.O. Box 4036
Sacramento, CA 95812-4036

October 20, 2006

Hector Hernandez D-33689
Correctional Training Facility
Highway 101N
Soledad, CA 93960

Dear Mr. Hernandez:

Your parole consideration hearing was conducted on June 8, 2006. Decision Review is completed and the final decision date of your hearing is October 6, 2006. The decision has been approved by the California Department of Corrections and Rehabilitation, Board of Parole Hearings.

The decision finding you suitable for parole may be subject to review by the Governor.

Attached is the last "Decision Page" with the stamped final date and a front cover sheet to your transcript. Please incorporate these pages in your copy of the hearing transcript.

Sincerely,

A handwritten signature in black ink that reads "Sandra D. Maciel".

SANDRA D. MACIEL
Chief, Decision Processing
and Scheduling Unit

cc: Institution Records Office

Enclosure

Pk

that report, he stated the following: "In order to make a statement that would give some clarity and resolution, I would practically have to answer the question of, "What is the meaning of Life and Death!" As difficult and at times overwhelming as this task is, it is what I've endeavored to do.

I could say my opponent (who became the victim) had been stealing from me and threatening my life, and that the actual gun shot which took his life was fired in self-defense. All of which is true. Yet in order to reach a greater and healthier understanding, I would first have to admit responsibility, which is what I've done. A few of the areas I've addressed (in order to gain a deeper understanding of the crime I committed) include my childhood, peer environment and spirituality. Only after extensive self-examination in those areas have I reached the conclusion that I needed a major adjustment in the way I relate to others, which entails developing a greater integrity for morals and ethics. This is an ongoing process with continual room for improvement. May it suffice self-examination in those areas have I reached to the conclusion that I needed a major adjustment in the way I relate to others, which entails developing a greater integrity for morals and ethics. This is an ongoing process with continual room for improvement. May it suffice to say that this journey of recovery and healing is something I'll be doing for the rest of my life."

3. Aggravating/Mitigating Circumstances:

a. Aggravating Factors:

1. The victim, was particularly vulnerable in that the prisoner entered the victim's home and shot him while he was lying on his couch and awakened by the prisoner.
2. The prisoner had a history of criminal behavior for which the term is not being enhanced under BPT Rule 2286.
3. The prisoner engaged in other reliably documented criminal conduct (attempted drug purchase) which was an integral part of the crime for which he is currently committed.
4. The inmate was on probation at the time the crime was committed.
5. During the commission of the crime, the prisoner had a clear opportunity to cease but instead continued.
6. The manner in which the crime was committed created a potential for serious injury to persons other than the victim of the crime.

b. Mitigating Factors:

1. The prisoner participated in the crime under partially excusable circumstances (heroin inebriation) that do not amount to a legal defense..
- B. Multiple Crime(s): N/A.
- a. Summary of Crime: N/A.
 - b. Prisoner's Version: N/A.

II. PRECONVICTION FACTORS:

A. Juvenile Record:

7/31/70 Burglarized Doctor's Office in Fresno, Removed \$80.00 cash
Disposition: Placed on informal probation.

10/5/70 Burglary- Entered a residence, removed 9 different types of weapons, a Polaroid camera, and a radio. Disposition: Placed on probation without wardship until 5/23/71. Dismissed 5/19/71.

4/22/71 Burglary – “S” entered Mission Baptist Church and removed \$10.50. Disposition: probation ordered; then released to parents.

9/23/71 Petty Theft “S” and accomplice stole \$190.00 from Luallen’s 76 Service Station. Disposition: Remain ward of the court, pay restitution, work program Sanger PD.

6/29/72 Burglary. Disposition: Commit to Youth Center; detain Juvenile Hall pending transfer.

7/18/72 Defendant and accomplice were found inside the closed business of Padillas Market. Disposition: Remain ward of Court on probation. Commit to Youth Center suspended.

B. Adult Convictions and Arrests:

1/10/80 Carrying a concealed weapon, carrying a loaded weapon, receiving stolen property. Dispo: no disposition.

11/12/80 Burglary. Dispo: No dispo.

11/14/80 Burglary. Dispo: No dispo.

10/6/81 Harboring a Federal Fugitive. Dispo: Convicted sentenced to 358 days in a Federal Correctional Institute.

8/25/82 Sell or Transport Marijuana, Burglary, Transport/Sell Controlled Substance. Dispo: All charges dismissed.

10/26/84 Under the Influence of Controlled Substance Obstruct/Resist Arrest. Dispo: No dispo.

C. Personal Factors: Hernandez was born on 2/28/59 in Fresno, California to Guadalupe Hernandez and Dolores Mejia. The defendant was raised in Fresno County. He is one of eight children. His brother, Guadalupe Hernandez Jr. was also convicted of murder in an unrelated case. His brother is currently housed at California State Prison, Corcoran. Hernandez completed the tenth grade at Sanger High School in 1975 and passed his General Education Development (GED) test on 5/4/92. He also indicated he completed vocational training in welding at Valley Technical and Trade School in Fresno. Hernandez married Janice Ramirez on 10/3/82 in San Bernardino. Four children were born to this union. The four children range in age from 12 to 17 years of age. The marriage is no longer intact. His work history consists of agriculture related labor. He admitted being a daily user of heroin, using between twenty and forty dollars worth of heroin everyday. He also admitted to being a regular consumer of beer, as well as sniffing glue and paint, and using PCP, LSD and cocaine occasionally. While Hernandez was initially incarcerated in the county jail, he was prescribed Syn aquat. Hernandez has not received any psychiatric treatment or medication since coming into the California Department of Corrections.

III. POSTCONVICTION FACTORS:

A. Special Programming /Accommodations: None.

B. Custody History: Hernandez was received at the California Medical Facility for his Initial Processing. He transferred and was received at Folsom – IV on 7/29/86. He was subsequently transferred and received at CTF on 10/7/03. On 10/14/86, he received his Initial Classification and was assigned Close B custody and released to the general population. He was assigned to the PIA Textile program as machine operator and earning satisfactory work grades. On 1/26/89, he transferred to CMC as a medical case and return awaiting medical treatment. Hernandez returned to CTF from CMC-East on 4/12/89. On 1/22/90, during Annual Program Review, his custody was reduced to Medium A. He was assigned to the CTF-Central Facility Boiler Room. He was unassigned on 9/3/91,

non-adversely from his Boiler Room assignment. He was reassigned to the Lunch Box Crew on 10/19/91. On 4/22/93, Hernandez transferred to North Kern State Prison under Medium A custody. He was assigned to the Vocational Mill and Cabinet and Teacher's Aide position. On 12/21/95, Hernandez was reassigned to a clerk's position. On 9/16/97, he was received at the CTF. He received his Initial Classification and custody was established at Medium A custody and he was released to the general population. While at CTF, Hernandez work assignments included Textiles, Vocational Graphics and Print. He completed the Vocational Graphic and Print Program per Instructor K. Eng. However, the document was not in the Central File for review. He transferred to East Dorm for housing and job placement. He was assigned to the Landscape and Painter's position on 4/11/03. However, there are no CDC 101 noting the prisoner's work performance during that period. Hernandez is currently assigned to the PIA Wood Furniture Factory (Assembler Shop). His Work Supervisor's record dated 7/1/03 reflect satisfactory work grades.

- C. **Therapy and Self-Help Activities:** Received a CDC 128-B dated 2/18/83 for his participation in NA. Hernandez was voted as Vice Chairman at this time. He received three (3) CDC 128-B's dated 2/18/03, 4/20/03 and 6/13/03 for his attendance in NA.
- D. **Disciplinary History:** None during this review period. However, Hernandez has a total of seven (7) CDC 115's and eleven (11) CDC 128-A's. [See attached Disciplinary Sheet]
- E. **Other:** On 2/20/03, Hernandez appeared before the Board of Prison Terms for his Subsequent Parole Consideration Hearing #4. The Board denied parole for (1) year and recommended that he remain disciplinary free and upgrade educationally (cell study) and participate in self-help and therapy programs.

IV. **FUTURE PLANS:**

- A. **Residence:** Hernandez plans to live with his mother Lolita Hernandez, located at 842 Edgar Street, Sanger, California 93657. Telephone #: (559) 875-3482. There are letters of support from his mother, who will provide a place of residence. She will also provide assistance with food and clothing plus transportation. See support letters in the Miscellaneous section of the Central File.
- B. **Employment:** He indicates that his main desire is to work as a counselor in recovery with youth/drug offenders and violence intervention. Hernandez did not offer any letters of interest from potential employers indicating job offers at this time .

C. Assessment: Parole plans have been reviewed and discussed with Hernandez. He has a family support who will provide him a place to live. However, he did not submit any potential job offers from employers in the county where he plans to parole. His parole plans do not appear solid at this time.

V. USINS STATUS: N/A.

VI. SUMMARY:

A. Considering the commitment offense, prior record and prison adjustment, this writer believes that the prisoner would probably pose a low degree of threat to the public at this time, if released from prison. This assessment of dangerousness is based on the prisoner's free disciplinary history for ten years, while in a controlled setting. However, his disciplinary history reflects seven CDC 115's and eleven counseling chronos. During this review period, Hernandez completed the Vocational Graphic Arts and Printing Program, according to his Instructor K. Eng. However, the certificate or document is not in the Central File for review at the present time. The prisoner was assigned to the East Dorm landscape/paint position on 4/11/03 to 5/17/03. There are no work supervisor reports noting his work performance. He was reassigned to the PIA Wood Furniture Factory as an assembler and earned satisfactory grades. He participated in three hours of video instruction and discussion of issues related to successfully re-engaging into society per a CDC 128-B dated 11/7/03. He participated in NA meetings per CDC 128-B dated 2/18/03 and during this time was voted as inmate vice-president or chairperson; attended meetings per CDC 128-B's dated 4/2/03, and 6/13/03. However, there are no documents that reflect any credited educational upgrading experience (cell study) as recommended by the Board, and no indication of psychiatric treatment this period. The prisoner's parole plans were discussed. He indicates that he has full support for his mother who would provide financial assistance and a place to live. However, he did not submit any potential job offers from employers in a county where he plans to parole. In discussing the life crime, the prisoner states that he feels bad about the victim and what he has done. He states not only that he killed the victim, he also killed the victim's family and the hope of his children. He indicates that he can't give the victim's life back and tries to find forgiveness within himself. The prisoner indicates involvement with his religious studies have helped him to understand and learned the wisdom of making good sound decisions by abstaining from drugs and alcohol. He indicates that he wants to give to others what he has learned about drugs, alcohol abuse and prevent them of falling into the same "pit lifestyle of drugs and alcohol". He states that he grew up in a rough community, which played a substantial role in leading to the crime. He states that he has paid his debt to society. He indicates that he is determined to live a lifestyle of sobriety

R.H.A.
2/21/04

and spiritual peace. He finally states, that he is committed to avoid drugs and alcohol and any negative influences that would impede his freedom again.

- B. Prior to release, the prisoner could benefit from by remaining disciplinary free and upgrade educationally (cell study) and participate in self-help and therapy programs.
- C. This report is based upon an interview with the prisoner on 12/3/03 lasting approximately (1) hour and a complete review of the Central File lasting (3) hours.
- D. Prisoner was afforded an opportunity to review his Central File, per the Olson Decision, on 12/3/03.
- E. No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan for effective communication.

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

- DOCUMENTATION HEARING
 PAROLE CONSIDERATION HEARING
 PROGRESS HEARING

INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, i.e., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

STCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
1/29/03 to 12/15/03 (Present)			<p>PLACEMENT: Remained at the Correctional Training Facility (CTF) and housed in the general population. 'S' transferred to the CTF East Dorm on 4/1/03.</p> <p>CUSTODY: Medium A.</p> <p>VOC. TRAINING: Assigned to the Vocational Graphic Arts and Printing program. 'S' completed the program per Instructor K. Eng during the month of April 2003, however, the certificate or document is not in the Central File noting completion of the course.</p> <p>ACADEMICS: None during this review period.</p> <p>WORK RECORD: Assigned to the East Dorm Landscape/Painter position on 4/11/03 to 5/17/03. However, there are no CDC 101's in the Central File noting 'S' work performance. On 5/17/03, 'S' was assigned to the PIA Wood Furniture Factory as a finisher. He was reassigned on 6/11/03 to the Assembly shop. He earned satisfactory work grades per a CDC 101 dated 7/1/03. He received additional training per a CDC 128B dated 5/17/03, on CAL/OSHA Hazardous Communication Standard, "Right to Know", and received additional training which included Safe Handling and Disposal of Hazardous Materials and Waste. 'S' received five (5) CDC 128-B's Training Certification chrono's on the proper operation and safety procedures of the Air, Eyes and Sound equipment, MSD (Material Safety Data) "Right to Know" information, Back and General Safety and Lockout/Tagout equipment. He received six (6) additional CDC 128-B's Training Certification chrono's dated 7/8/03 on the proper operation and safety procedures of the Abrasive Edge Sander equipment, Ladders, Portable Power and Hand Tools, Fire Safety and Portable Hand Router equipment. Participated in a three (3) hours of Video Instruction and Discussion of issues related to successfully re-engaging into society per a CDC 128-B dated 11/7/03.</p> <p>GROUP ACTIVITIES: Received a CDC 128-B dated 2/18/03 for his participation in NA. 'S' was voted as Vice Chairman at this time. He received three (3) CDC 128-B's dated 2/18/03, 4/2/03 and 6/13/03 for his attendance in NA.</p> <p>PSYCH. TREATMENT: None during this period.</p> <p>PRISON BEHAVIOR: None during this period.</p> <p>OTHER: N/A.</p>

CORRECTIONAL COUNSELOR'S SIGNATURE

H. Hernandez

DATE

3/4/04

HERNANDEZ, HECTOR

D-33689

CTF-SOLEDAD

FEB/2004

DISCIPLINARY SHEET

CDC 128A's:

6/14/88 CTF Absence for Job.
 11/6/88 CTF Out of Bounds.
 1/17/89 CTF Excessive Contact with Visitor.
 9/29/89 CTF Unauthorized Possession.
 3/5/90 CTF Destruction of State Property.
 3/26/90 CTF Unauthorized Absence
 4/14/92 CTF Unauthorized Absence.
 6/18/92 CTF Stealing State Property.
 6/20/92 CTF Stealing State Property.
 3/25/94 CTF Excessive Contact with Visitor.
 6/17/00 CTF Disregarding Yard Call Procedures.

CDC 115's:

11/18/90 CTF 3004 Disrespect Towards Staff. Guilty: Counseled.
 12/18/91 CTF 3006 Possession of Utility Knife Blade (Dangerous Contraband). Guilty: 30 days LOC.
 12/18/91 CTF 3016 Possession of Inmate Manufactured Alcohol. Guilty: 90 days LOC.
 9/2/92 CTF 3053 Stealing State Food. Guilty: 20 Hours Extra Duty.
 9/10/92 CTF 3191B Out of Possession of Non-Expandable Personal Property. Guilty: 40 Hours Extra Duty.
 10/10/92 CTF 3053 Misuse (Stealing) State Food. Guilty: 20 Hours Duty.
 2/10/99 CTF 3062 Hair Exceeding 3 Inches in Length. Guilty: 20 Hours Extra Duty.

LIFE PRISONER EVALUATION REPORT
SUBSEQUENT PAROLE CONSIDERATION HEARING
FEBRUARY 2004 CALENDAR

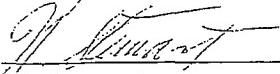


3-4-04

H. Staten

Date

Correctional Counselor I

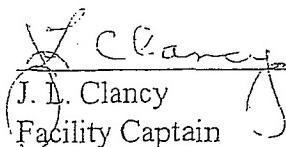


3/10/04

W. Stewart

Date

Correctional Counselor II



J. L. Clancy

3/10/04

Date

Facility Captain



D.S. Levorse

3-11-04

Date

Classification and Parole Representative

BOARD OF PRISON TERMS

LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

STATE OF CALIFORNIA

- DOCUMENTATION HEARING
 PAROLE CONSIDERATION HEARING
 PROGRESS HEARING

C-file copy**ADDENDUM**

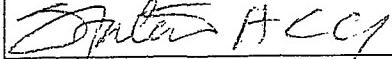
INSTRUCTIONS

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POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
4/8/05 to 5/4/06 (Present)			<p>PLACEMENT: CTF II and housed in the general population.</p> <p>CUSTODY: Medium A.</p> <p>VOC. TRAINING: None noted during this review period.</p> <p>ACADEMICS: None noted during this review period.</p> <p>WORK RECORD: PIA Wood Furniture Factory Assembly Shop. He earned satisfactory to above average work grades per his work supervisor's reports (CDC 101's) dated 6/1/05 and 9/1/05. He received a 128B dated 12/9/05 for participating in two (2) hours of video instruction and discussion related to community re-entry. This program is provided through the PIA Inmate Employability Program.</p> <p>GROUP ACTIVITIES: He participated in Narcotics Anonymous group meetings per 128Bs dated 6/28/05, 1/21/05, 1/6/06, and 4/3/06. He attended Narcotics Anonymous meetings and completed 10 weeks of Hepatitis "C" group meetings with staff psychologist C. Brown Ph.D., per 128-C dated 8/25/05. Hernandez received a letter of accommodation from the Buddhist Meditation and Ethical Practices dated 6/6/05.</p> <p>PSYCH. TREATMENT: None noted during this review period.</p> <p>PRISON BEHAVIOR: None noted during this review period.</p> <p>OTHER: On 4/20/06, Inmate Hernandez was given the opportunity to review his Central File pursuant to the Olson Decision per 128B.</p>

CORRECTIONAL COUNSELOR'S SIGNATURE



HERNANDEZ

D33689

DATE

5-17-06

CTF-SOLEDAD

Sent to inmate on 5-25-06

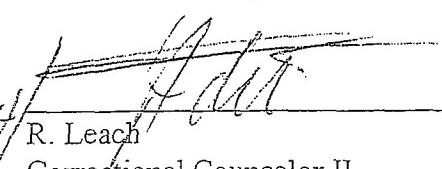
LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

ADDENDUM


H. Staten

5-17-06
Date

Correctional Counselor I


R. Leach

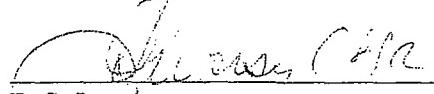
5-22-06
Date

Correctional Counselor II


R. Pope

5-22-06
Date

Facility Captain


D.S. Leyorse

5-23-06
Date

Classification and Parole Representative

HERNANDEZ

D33689

CTF-SOLEDAD

A T T A C H M E N T A

1 HC06CRWR678189-GDH-cm
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FILED

JAN 11 2007

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

By _____ DEPUTY

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

9 CENTRAL DIVISION

10
11 In re) No. 06CRWR678189 Dept. 71
12 HECTOR HERNANDEZ,)
13 Petitioner) ORDER
14 On Habeas Corpus.)
15

16 Having considered the petition for writ of habeas corpus
17 filed on December 18, 2006, the court finds that existing evidence
18 does not warrant the requested relief.

19 Petitioner challenges the Governor's reversal of the
20 Parole Board's decision to grant his parole. However, whether or
21 not this court agrees with the Governor's conclusion, his decision
22 may not be overturned so long as it is supported by "some
23 evidence." (See, e.g., *In re Fuentes* (2005) 135 Cal.App.4th 152,
24 *In re Shaputis* (2005) 135 Cal.App.4th 217, *In re Lowe* (6th Dist.
25 2005) 130 Cal.App.4th 1405, *Rosas v. Nielsen* (9th Cir. 2005) 428
26 F.3d 1229, *In re DeLuna* (2005) 126 Cal.App.4th 585, *In re Scott*
27 (2005) 119 Cal.App.4th 871, *In re Van Houten* (2004) 116 Cal.App.4th
28 339, *Biggs v. Terhune* (9th Cir. 2003) 334 F.3d 910, and *In re*

1 Rosenkrantz (2002) 29 Cal.4th 616.) To the extent that petitioner
 2 asks the court to apply a different standard, the court must
 3 follow the holdings of the Supreme Court and Courts of Appeal,
 4 which require application of the "some evidence" standard of
 5 review.

6 Here, the court finds that there was at least some
 7 evidence that releasing petitioner could pose an unreasonable risk
 8 to society or a threat to public safety, because of the violent
 9 nature of the original offense, and the escalating pattern of
 10 petitioner's criminal conduct before the murder, as well as his
 11 multiple disciplinary infractions during his incarceration.

12 According to the record, petitioner was convicted of
 13 second-degree murder and sentenced to 15 years to life, plus a
 14 two-year enhancement for use of a firearm. The Board of Parole
 15 Hearings granted petitioner's parole on June 8, 2006, after having
 16 previously denied him parole seven times. (Exhibit 1 to petition.)
 17 However, the Governor reversed the Board's decision on November 2,
 18 2006. (Exhibit 3 to petition.)

19 The Governor relied largely on the seriousness of the
 20 underlying offense. (Exhibit 3, p. 2.) The Governor noted that
 21 petitioner shot Sylvestre Bustos to death while attempting to
 22 purchase heroin. (*Id.* at p. 1.) Petitioner went to Bustos' home
 23 to buy heroin. (*Ibid.*) Petitioner spoke to Bustos' roommate,
 24 Enrique Casias, through the window. (*Ibid.*) Casias agreed to
 25 sell Bustos heroin for \$20. (*Ibid.*) Petitioner paid the money
 26 and Casias went to retrieve the heroin from Bustos' boots.
 27 (*Ibid.*) Bustos was asleep on the couch with a gun tucked in his
 28 waistband. (*Ibid.*) When Casias went to get the heroin, petitioner

1 forced his way into the house armed with a sawed-off shotgun.
 2 (*Ibid.*) He demanded Bustos' gun and the heroin. (*Ibid.*) When
 3 Bustos rose from the couch, petitioner shot him one time from a
 4 distance of about seven or eight feet. (*Ibid.*) He then took
 5 Bustos' gun and fled the scene. (*Ibid.*)

6 The facts cited by the Governor tend to support the
 7 conclusion that the murder was committed in a callous manner. The
 8 petitioner shot Bustos at close range with a sawed-off shotgun
 9 shortly after Bustos had woken up. There was some evidence of
 10 premeditation, since petitioner went to Bustos' home armed with a
 11 shotgun. Although petitioner claims that he shot Bustos in self-
 12 defense, two witnesses testified that they heard only one shot.
 13 (Governor's review, p. 2.) There was also evidence that the
 14 petitioner created the dangerous situation by forcing his way into
 15 Bustos' residence with a shotgun. (*Ibid.*) Therefore, the
 16 Governor's skepticism about petitioner's expressed remorse and
 17 acceptance of responsibility has at least some basis in fact.

18 In addition, the Governor noted that during his
 19 incarceration, petitioner was disciplined seven times for rules
 20 violations involving grooming standards, possession of inmate
 21 manufactured alcohol, possession of a utility knife blade,
 22 stealing food, improperly loaning personal property, and
 23 disrespecting staff. (*Id.* at p. 1.) He was also counseled 12
 24 times for minor violations, most recently in 2000. (*Ibid.*) Thus,
 25 petitioner's conduct while incarcerated was not discipline-free,
 26 which tends to support the Governor's conclusion that petitioner
 27 could still be a risk to public safety if released.

28 In addition, the Governor observed that petitioner had

1 an extensive criminal record before he committed the murder,
 2 including juvenile adjudications for armed robbery, assault with a
 3 deadly weapon, burglary, petty theft, carrying a concealed
 4 firearm, joyriding, and resisting an officer. (*Ibid.*) He also had
 5 convictions as an adult for discharging a firearm at an occupied
 6 dwelling or vehicle, harboring a federal fugitive, being under the
 7 influence of a controlled substance, and driving under the
 8 influence of a controlled substance. (*Ibid.*) He also admitted to
 9 using heroin, cocaine, LSD, marijuana, and PCP. (*Ibid.*) Thus,
 10 the Governor believed that petitioner's criminal history prior to
 11 the life offense weighed against his parole suitability. (*Ibid.*)

12 Under the circumstances, there was at least some
 13 evidence that petitioner might still pose a risk if released,
 14 based on the petitioner's criminal history, as well as the
 15 seriousness of the life offense itself and the petitioner's
 16 multiple disciplinary infractions while incarcerated.
 17 Consequently, the court cannot overturn the Governor's decision.

18 The petition is denied.

19 DATED this 11th day of January, 2007.

20 GARY S. AUSTIN

21 _____
 22 GARY S. AUSTIN
 23 Judge of the Superior Court

PROOF OF SERVICE BY MAIL

CASE NAME: HERNANDEZ v. SCHWARZENEGGER

CASE NO. : To be assigned

I, Hector Hernandez, hereby declare that I am a party to the above titled action and am over the age of eighteen (18), and I did serve a true copy of the following:

WRIT OF HABEAS CORPUS

by placing a true copy in an envelope with first class postage fully prepaid and said envelope surrendered to correctional staff at the Correctional Training Facility for delivery to the prison mail room and therefrom delivered to the local United States Post Office the next business day from which there is postal service between the place of mailing and the addressee:

Jerry Brown
Attorney General
455 Golden Gate Ave., #11000
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct, doing so this 19th day of February, 2007, at Soledad, California.

Hector Hernandez
Hector Hernandez